

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**SCOTT R. ALBRIGHT, as Executor,
of the Estate of DEAN THOMAS ALBRIGHT,**

Plaintiff,

v.

3:20-CV-227 (Groh)
Civil Action No. _____

JAKOB TOMAN and CTWWM, INC.,

Defendants.

NOTICE OF REMOVAL

COME NOW the Defendants, Jakob Toman and CTWWM, Inc., by their undersigned counsel, and hereby give notice of the removal of this civil action from the Circuit Court of Jefferson County, West Virginia to the United States District Court for the Northern District of West Virginia. This Notice of Removal is filed pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. As grounds for removal, Defendants aver as follows:

1. On November 20, 2020, plaintiff Scott R. Albright, as Executor of the Estate of Dean Thomas Albright, commenced a civil action against Defendants by filing a Complaint in the Circuit Court of Jefferson County, West Virginia, captioned: *Scott R. Albright, as Executor of the Estate of Dean Thomas Albright v. Jakob Toman and CTWWM, Inc.*. A certified copy of the Circuit Court's file is attached hereto as Exhibit A.

2. Exhibit A constitutes all process, pleadings, and orders served on Defendants in the state court action as of the date of this Notice.

3. This civil action is removed on the basis of this Court's diversity jurisdiction. The

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Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), in that this action involves a controversy that is properly and wholly between citizens of different States.

4. Plaintiff is a resident of the State of West Virginia; and Defendants are citizens of the Commonwealth of Virginia.

5. The amount in controversy is in excess of \$75,000, exclusive of interest and costs, inasmuch as Plaintiff alleges that Plaintiff's decedent, Dean Albright, died from injuries sustained in an accident allegedly caused by Defendant Toman. *See* Exhibit B, Amended Complaint, at ¶¶ 7-22, and 29-30. Plaintiff seeks compensatory and punitive damages for the death of Dean Albright. *See* Amended Complaint, Ex. B, at Prayer for Relief, p. 11.

BACKGROUND AND AMOUNT IN CONTROVERSY

6. In this civil action, Plaintiff alleges, *inter alia*, that on January 25, 2019, his father, Dean Albright, was fatally injured when a box truck driven by Jakob Toman, an employee of CTWWM, Inc., swerved from its lane of travel and crossed into the left lane, nearly crashing into Mr. Albright's vehicle. Plaintiff further alleges that Mr. Toman's sudden movement caused Mr. Albright to lose control of his vehicle, sending him into the median and over the edge of a 30 foot high overpass where his injuries eventually led to his death. *See* Amended Complaint, Ex. B, at ¶¶ 7- 11.

7. Plaintiff also asserts that CTWWM, Inc. is liable under theories of negligent hiring, training, entrustment, supervision, retention and maintenance. *See* Exhibit B, Amended Complaint, ¶¶ 47-62.

8. Given the above-referenced allegations in the Amended Complaint, asserting a claim

for wrongful death, it is clear that the amount in controversy, exclusive of interest and costs, exceeds \$75,000, thereby meeting the jurisdictional threshold of 28 U.S.C. § 1332(a).

9. When a defendant seeks federal court adjudication, “the defendant’s amount-in-controversy allegation should be accepted when not contested by the plaintiff or questioned by the court.” *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 87 (2014).

DIVERSITY OF CITIZENSHIP

10. Plaintiff is a resident of the State of West Virginia, residing in Berkeley County.

11. Defendant, Jakob Toman, is a resident of the Commonwealth of Virginia, residing in Staunton, Virginia.

12. Defendant, CTWWM, is a corporation organized and existing under the laws of the Commonwealth of Virginia, with its headquarters and principal place of business located in Ivy, Virginia. *See* Exhibit C, West Virginia Secretary of State Business Details. *See* Exhibit D, Virginia State Corporation Commission business details. *See also Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010) (when determining citizenship of a corporation, the phrase ‘principal place of business’ refers to the headquarters from where the corporation’s officers and executives direct, control, and coordinate the corporation’s activities).

13. Diversity of citizenship between Plaintiff (a West Virginia resident) and Defendants (Virginia residents), existed at the time this action was commenced by Plaintiff on November 20, 2020, and continues through the date of filing this Notice of Removal. *See* Exhibits C and D.

TIMELINESS OF REMOVAL

14. Defendants’ counsel accepted service of the Complaint for both Defendants on

November 25, 2020.

15. This Notice of Removal is filed within thirty days of service on Defendants of a copy of the initial pleading setting forth the claims for relief upon which this action is based, and is therefore timely pursuant to 28 U.S.C. § 1446(b).

16. This Notice of Removal is being filed within one year of the commencement of this action by Plaintiff on November 20, 2020. See U.S.C. § 1446(c)(1).

CONCLUSION

17. Venue is proper in the United States District Court for the Northern District of West Virginia pursuant to 28 U.S.C. § 1441(a), because it is the district embracing the state court in which this action was commenced.

18. Pursuant to 28 U.S.C. § 1332(a), Plaintiff and Defendants are diverse and removal is appropriate pursuant to 28 U.S.C. § 1441(a).

19. Pursuant to 28 U.S.C. § 1446(d), a copy of the Notice of Filing of Notice of Removal is being filed contemporaneously with the Clerk of the Circuit Court for Jefferson County, West Virginia. A copy of the Notice of Filing Notice of Removal (without exhibits) is attached as Exhibit E.

WHEREFORE, this Court has jurisdiction pursuant to 28 U.S.C. § 1332(a), based on the diversity of citizenship between Plaintiff and Defendants, and removal is appropriate pursuant to 28 U.S.C. §§ 1441(a) and 1446.

JAKOB TOMAN and CTWWM, INC.,
Defendants, By Counsel

/s/ Tracey A. Rohrbaugh

Tracey A. Rohrbaugh (WVSB #6662)

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CERTIFICATE OF SERVICE

I, Tracey A. Rohrbaugh, counsel for Defendants, do hereby certify that I electronically filed the foregoing *Notice of Removal* with the Clerk of the Court by using the CM/ECF system which will send notification of such filing to the below-named counsel:

Stephen G. Skinner, Esq.
Skinner Law Firm
115 E. Washington Street
Charles Town, WV 25414
Counsel for Plaintiff

Dated this 21st day of December, 2020.

/s/ Tracey A. Rohrbaugh
Tracey A. Rohrbaugh